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Attorneys for Defendant  
United States of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

**SAMSON TUG AND BARGE CO., INC., an  
Alaska Corporation**

Plaintiff/Appellant

V.

UNITED STATES OF AMERICA,

acting by and through

the UNITED STATES DEPARTMENT of the  
NAVY MILITARY SEALIFT COMMAND,  
and UNITED STATES DEPARTMENT OF  
THE ARMY MILITARY TRAFFIC  
MANAGEMENT COMMAND

Defendants/Appellees

Civil No. A03-006 CV

IN ADMIRALTY

DECLARATION OF  
JEANNE M. FRANKEN  
IN OPPOSITION TO PLAINTIFF'S  
MOTION IN LIMINE

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MOTION IN LIMINE

1 I, Jeanne M. Franken, do hereby declare and affirm the following matters in  
2 opposition to plaintiff's motion in limine.

3 1. I am a Trial Attorney with the West Coast Office of the Torts Branch, Civil  
4 Division, United States Department of Justice, and one of the attorneys for defendant, United  
5 States of America, herein, and make this declaration based on information and belief.

6 2. I have knowledge of the matters asserted herein.

7 3. Attached to the Government's Opposition Memorandum as Exhibit "A" is a  
8 true and correct copy of excerpts of the Deposition of Douglas Anderson.

9 4. Attached to the Government's Opposition Memorandum as Exhibit "B" is a  
10 true and correct copy of Samson's Response to the Government's Request for Admission  
11 No. 1.

12 5. Attached to the Government's Opposition Memorandum as Exhibit "C" is a  
13 true and correct copy of excerpts of the Deposition of Robert Clark.

14 6. Attached to the Government's Opposition Memorandum as Exhibit "D" is a  
15 true and correct copy of excerpts of the Deposition of William Duerden.

16 7. Attached to the Government's Opposition Memorandum as Exhibit "E" is a  
17 true and correct copy of excerpts of the Deposition of Michael Gragen.

18 8. Attached to the Government's Opposition Memorandum as Exhibit "F" is a  
19 true and correct copy of the entire Supplemental F.R.C.P. 30(b)(6) Notice plaintiff Samson  
20 served in June of 2006 on the United States requesting that knowledgeable witnesses be  
21 produced to testify on behalf of the Government on a laundry list of subjects. An earlier, far  
22 less broad, Notice had been served in November of 2005. Upon receipt of the Supplemental  
23 Notice, efforts were immediately begun to identify additional persons who might be able to  
24 address the wide range of subjects contained in the Supplemental Notice from the various  
25 services and agencies involved.

26 9. Attached to the Government's Opposition Memorandum as Exhibit "G" is a true  
27 and correct copy of a letter I sent after receiving the Supplemental Notice requesting

1 guidance to narrow the issues contained therein, and advising that the United States would  
2 fully co-operate in producing witnesses but at mutually agreed upon dates and times.

3 10. Witnesses were produced over a two year period in response to plaintiff's first  
4 and then Supplemental Notices, at various times and places, until counsel for Samson advised  
5 that they did not wish to proceed with any additional depositions of fact witnesses in  
6 mid-2007. At several points during this process, having reset the depositions of former and  
7 current service members and federal employees on numerous occasions and having been  
8 advised that Samson wanted to postpone the taking of several of the Government's witnesses  
9 yet again, I finally convened several of the depositions, *de bene esse*, in order to preserve  
10 the witnesses' testimony for trial.

11 11. As recently as the end of last year, I verbally offered to make responsive  
12 witnesses available to Samson if they desired additional testimony on any subject listed in  
13 their lengthy Supplemental Notice. This occurred after counsel for Samson indicated that  
14 they would be advising the Court that the case was not ready for trial because the  
15 Government had supposedly not produced all witnesses Samson had asked for in its  
16 Notice(s). The Government included its offer to continue to make responsive witnesses  
17 available in the separate statement regarding trial readiness it filed at the beginning of this  
18 year. (See, Docket No. 69).

19 12. Extensive efforts were made through counsel at appropriate parts of the Navy  
20 and the AMC throughout this litigation to specifically locate additional flight data, as part  
21 of the overall and ongoing Government effort to locate and produce documents requested by  
22 Samson in this case from those agencies as well as from the Army. More than 40 boxes of  
23 material was eventually produced as it was located in various archives, warehouses, offices  
24 and employee files around the country, including the computer print outs of flight data which  
25 Samson concedes contain some cargo information.

1 I hereby verify under penalty of perjury, and in accordance with 28 U.S.C. §1746, that  
2 the foregoing is true and correct.

3 DATED: 4/15/08

4  
5 /s/ Jeanne M. Franken  
6 JEANNE M. FRANKEN  
7  
8

9 CERTIFICATE OF SERVICE

10 I HEREBY CERTIFY that on 4/15/08, a copy of the foregoing DECLARATION OF  
11 JEANNE M. FRANKEN IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE,  
12 was served electronically on:  
13

14 Richard D. Gluck, Esq.  
15 Garvey Schubert Barer

16  
17 William G. Royce, Esq.  
18 Law Office of William G. Royce

19 Attorneys for Plaintiff/Appellant  
20 Samson Tug and Barge Company, Inc.  
21

22 s/Jeanne M. Franken

23 \_\_\_\_\_  
24 JEANNE M. FRANKEN  
25  
26

27 DECLARATION OF JEANNE M. FRANKEN  
28 IN OPPOSITION TO PLAINTIFF'S  
MOTION IN LIMINE